DOCUMENT RESUME

ED 094 019 UD 014 323

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TITLE	The Story of Emergency School Aid, a Legislative Step-Child: Policy-Making in a Transitional Period.
PUB DATE	19 Apr 74
NOTE	20p.; Paper presented at the Annual Meeting of the American Educational Research Association (59th, Chicago, Illinois, April 1974)
EDRS PRICE	MF-$0.75 HC-$1.50 PLUS POSTAGE
DESCRIPTORS	*Educational Legislation; *Federal Aid; Federal Government; *Federal Legislation; Government Role; Integration Effects; Integration Methods; Policy Formation; Political Issues; Politics; Public Policy; *School Districts; *School Integration
IDENTIFIERS	Emergency School Aid Act; Emergency School Assistance Program; ESAP

ABSTRACT

Well into his second year of office, President Nixon proposed a two-part emergency program to alleviate the problems that desegregation was creating for the nation's schools. Shortly thereafter the Congress authorized one-half of the President's 150 million dollar request for a short-term, crash program for project grants to school districts who were under court orders to desegregate. The President asked that the second part of his desegregation aid program, which requested a 1.5 billion dollar authorization for fiscal years 1971-72 be enacted during the 1970 session. At the time, the presidential proposal gave little hint of the legislative fate which awaited it, a litany of frustration and confusion which culminated in the passage of the act on June 23, 1972. Its history provides a highly interesting subject for investigation and theoretical speculation by students of the politics of education. Each of the following elements are important to understanding the emergency school aid story: early forewarnings of impending policy reversal; the strategems of the Executive Branch; public concern over the effects of school desegregation and busing; competition with existing legislation; and the pursuit of some seemingly erratic actions by all the policy-makers involved. (Author/JM)

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THE STORY OF EMERGENCY SCHOOL AID, A LEGISLATIVE STEP-CHILD: POLICY-MAKING IN A TRANSITIONAL PERIOD

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Presented to the
Discussion on Studies in the Politics of
Educational Decision-Making, Division A,
Number 24.06.

American Educational Research Association,
Chicago, Illinois
Friday, April 19, 1974
8:15 - 10:15 A.M.

U.S. DEPARTMENT OF HEALTH
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

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The Story of Emergency School Aid, A Legislative Step-Child: Policy-Making in a Transitional Period

Well into his second year in office, President Nixon launched his first educational policy initiative, a two-part emergency program to alleviate the problems that desegregation was creating for the nation's schools. Shortly thereafter the Congress authorized one-half of the President's $150 million request for a short-term, crash program for project grants to school districts who were under court orders to desegregate. This first half of the President's program was called the Emergency School Assistance Program (hereafter ESAP). The President asked that the second part of his desegregation aid program, which requested a $1.5 billion authorization for Fiscal Years 1971 and 1972, be enacted during the 1970 session. It was to be entitled the Emergency School Aid Act (hereafter ESAA). At the time, the presidential proposal gave little hint of the legislative fate which awaited it, a litany of frustration and confusion which culminated in the passage of the Act on June 23, 1972 (PL 92-318). Its history provides a highly interesting subject for investigation and theoretical speculation by students of the politics of education; if only because of such anomalies as the following:

--The President's program to help alleviate desegregation problems was either altered or neglected at every turn of the policy-making process, so that the end result

some four years later bears little resemblance to the original proposal.

--The stop-gap ESAP funding, intended to last only several months, was continued for more than three years, until the winter of 1973, while the Congress and the President leisurely attended to the passage of a so-called "emergency" measure. It appears the faltering pace of public and governmental action to overcome desegregation problems during this period renders ironic even the title of the 1972 Act.

--Twice during congressional consideration of ESAA, the President proposed changes that reversed the intent of his own original proposal. Interest in the bill ebbed in the House of Representatives until a liberal, black Democrat revived the Republican President's initiative.

--Between the fall of 1970 and the winter of 1973, almost $170 million was spent on ESAP through two continuing resolutions. After ESAA was passed, however, only a little over one-half a billion dollars was expended from the $2 billion authorizations for Fiscal Years 1973 and 1974. Thus a large portion of the desegregation aid money was spent before legislation detailing the conditions for expenditure of the funds was enacted.

--Congressmen developed some counter initiatives in mid-course by "looking over the shoulders" of the ESAP administrators. The propriety of the initial ESAP expenditures was almost immediately questioned in the fall of 1970

by a private civil rights organization, and Congress subsequently enacted strict accountability provisions for ESAA funding. Further, findings that ESAP mainly assisted southern school districts led to the broadening of eligibility for ESAA funds to include other sections of the nation.

Why did ESAP-ESAA undergo so protracted and confused a policy-making process? How was the sense of "emergency" needs blunted? Definite answers are hard to establish, but each of the following elements are important to understanding the emergency school aid story: early forewarnings of impending policy reversal; the strategems of the Executive Branch; public concern over the effects of school desegregation and busing; competition with existing legislation; and the pursuit of some seemingly erratic actions by all the policy-makers involved.

Early Forewarnings of Policy Reversal

Titles IV and VI of the 1964 Civil Rights Act initiated the basis for federal involvement in both supervision of desegregating public schools and federal aid to those schools. Title IV provided funds to establish offices in State departments of education and at special university centers to help school districts with desegregation problems. To use Title IV resources, the school districts had to be willing to cooperate with Title IV center personnel. On the other hand, Title VI carried the desegregation enforcement sanctions. Through it, federal funds could be withheld from school districts failing to meet desegre-

gation standards. In other words, Title IV was the carrot and Title VI was the stick.

Under the Johnson administration, Title VI was emphasized while Title IV took a back seat. Under the Nixon administration, the attitude toward desegregation began to change, and the first signs of that change came in 1969 when responsibility for Title VI desegregation sanctions for all practical purposes was moved to the Justice Department and away from the Department of Health, Education, and Welfare (hereafter HEW). As a result, there were competing supporters and opponents of strict federal regulation of desegregation within the bureaucracy, and strong enforcement of Title VI no longer had unquestioned priority.

This development was not lost on hold-out segregationist school districts, and pro-integrationists undertook again to rely on the courts for compliance orders. From 1968 to 1970 the number of school districts implementing final court-ordered desegregation plans rose from thirteen to two hundred eighty-nine. They were largely in states whose laws had previously required dual school systems.[1] The Nixon administration "southern strategy" dictated using the carrot rather than the stick to meet the federal responsibilities for enforcing the Civil Rights Act. Consequently, Title IV and the U.S. Office of Education's Division of Equal Educational Opportunity (hereafter DEEO), which administered Title IV, came into new prominence. Writing several months before the President's ESAP-ESAA proposal, John Egerton believed change in federal policy on school desegregation was imminent:

> In short, school desegregation has become a national issue once again, and the fallout from it is pervasive. Nowhere is this more evident than in the DEEO. It has become an academic question whether Title IV of the 1964 Civil Rights Act can be a resourceful instrument for the firm establishment of equal educational opportunity in the nation's public schools, right now, it is simply an instrument of the Nixon administration's evolving policy on school desegregation.[2]

Thus, from the beginning of the Nixon administration there were forewarnings of change in the activist federal role in education; and particularly in school desegregation policy, which had been hallmarks of the preceding Democratic administration. The problem of dealing with a hostile Congress dictated, however, that the disengagement would not be either rushed or straightforward.

Strategems of the Executive Branch

Doubtless, the architects of the early Nixon educational policies were aware that a full-scale, highly visible assault on the popular Great Society school aid programs would be unavailing. But a President has many resources either to sidestep existing legislation and entrenched administrative policies or to counterbalance them with short-term program initiatives which, hopefully, will bring him the rewards of public acclaim. If this occurs, he had laid the groundwork for eventually obtaining the legislative or appropriations "reform," he prefers. Some useful devices are to make flexible use of the program administration authority already granted by Congress under existing statutes and to seek interim funding authority through

the supplemental rather than the regular annual budgetary process. These were both employed to launch and sell the ESAP proposal to Congress in early 1970. For legislative legitimacy it leaned on the prospective enactment of its companion piece ESAA, but it was in fact based on a shaky jerry-built collage from pieces of six prior enactments and it was funded by supplemental appropriations.

Highly political in its origins, the ESAP-ESAA proposal was not subjected to the scrutiny of experienced HEW-USOE program specialists. It was produced by a task force entitled the Cabinet Committee on Education, headed by Vice-President Agnew, which was more likely to be concerned with the program's political pay-off than with a durable statutory or administrative design. Only some fancy footwork by Senator Jacob Javits kept Senator John Stennis from defeating ESAP because of its initial lack of a coherent legislative base. In fact, Senator Stennis knocked ESAP out of one supplemental appropriations bill for this very reason. After Javits' presentation, which was a justification based on a conglomeration of prior legislation, ESAP finally passed in the summer of 1970. Congress succumbed to the stress of its "emergency" nature, giving the President one-half of his $150 million request so that ESAP funds could be available for the opening of school in the fall of 1970.

The USOE wasted little time or caution in expending ESAP funds. Four days after congressional approval of ESAP, guidelines on ESAP were published in the Federal Register. HEW

started spending immediately, and had exhausted most of the funds prior to the 1970 congressional elections. Thus the administration got what mileage it could from a program carrying the Nixon label.

In November of 1970, a private civil rights organization, the Washington Research Project (hereafter WRP), reported on its investigation of the ESAP administration. The general conclusion was that recipient school districts, the majority of which were located in the south, had used ESAP funds as they pleased with little attention to the alleviation of the problems of segregation. The WRP staff indicated that the guidelines for ESAP were mostly acceptable, but that it was the administration of those guidelines that was unacceptable. Their report stated:

> The promise of the Emergency School Assistance Program has been broken.
>
> Funds that were appropriated by the Congress last August to help desegregate public schools have been used for general school aid purposes unrelated to desegregation. In many instances, funds have been granted to school districts that are continuing to discriminate against black children.[3]

The speed with which the DEEO acted probably caused more misuse of funds than the WRP report indicated. In approving projects, DEEO had assumed local districts were in compliance with desegregation requirements unless blatant violations were evident. Moreover, a thirty-six hour approval deadline was placed upon regional grant reviewers for ESAP funds.

Thus ESAP left a trail of political opportunism and shoddy administration that was to plague the legislative future

of its partner ESAA, as well as its own future implementation. And from the perspective of 1974, it appears as a significant early sortie in what was to develop into full-scale war between the President and the Congress over education policy.

Public Concern Over Desegregation and Busing

At several stages, public concern over school desegregation added to the shifting influences surrounding the ESAP-ESAA proposals. The spectacular rise of court-ordered desegregation just prior to the opening of school in the fall of 1970, unquestionably stimulated the original thrust of ESAP-ESAA. The argument that "problem" school districts faced with judicially-imposed deadlines and requirements needed some financial help could not readily be resisted, especially by southern congressmen.

Prior to the opening of school one year later, in the fall of 1971, public concern was again strongly articulated, but it was more focused on opposition to the use of busing to desegregate schools, specified in many court-approved plans or undertaken voluntarily by many districts. Simultaneously, the President appeared to switch horses in mid-stream. He proposed an amendment to ESAA that denied use of ESAA funds for busing to desegregate or to achieve racial balance. Thus while ESAA was being touted as a way to help districts meet court orders, the anti-busing amendment refused money for a widely used desegregation tactic of the courts.

As public concern over busing continued to ferment, so did the President's ambivalence on ESAP-ESAA. Finally, in March of 1972, two years after his initial proposal, the President advocated setting it entirely aside. In the Ninety-third Congress he proposed a moratorium on busing, the Student Transportation Moratorium Act (HR 13916), and a combination of the major federal aid programs into a new general aid approach, the Equal Educational Opportunity Act (HR 13915). These actions followed closely after a heated Florida presidential primary which indicated the primacy of the busing issue. Not only did anti-busing foe George Wallace win the primary, but seventy-four percent of the Florida voters supported a constitutional amendment prohibiting busing for purposes of racial balance. This message was not lost on a President who would be seeking reelection in November, 1972.

Competition With Existing Legislation

During the early months of the Nixon incumbency, the Democratic Congress was preoccupied with enacting an extension of the landmark Elementary and Secondary Education Act of 1965 (PL 89-10, hereafter ESEA) in advance of its expiration date of June 30, 1970. This was successfully accomplished in the spring of 1970 without any major alteration of the basic Act, in spite of the criticism of its effectiveness levied by administration spokesmen and Republican members of Congress. Significantly, the extension was for three years, which meant

that the Act would not come up again for renewal until after the presidential elections of 1972. When a newly-elected President serves with a Congress dominated by the opposition party, he normally attempts either to discredit, or push for "improvements" of, on-going programs enjoying congressional support. Nixon's ESAP-ESAA proposal may be viewed as a prime example of this aspect of partisan and executive-congressional competition.

What were the conflicting elements of the Nixon initiative and what did they contribute to muddying the waters of federal school aid policy?

First was its timing. In the congressional extension of ESEA, the President's desire to greatly reduce the number of categorical grants under ESEA and to extend the Act for only a short period was denied. When Congress extended ESEA beyond his first term, he also lost an early opportunity to promote a comprehensive alternative. President Nixon introduced ESAP-ESAA with its more focused purposes very shortly after the final passage of the ESEA extension, so that a program of his own liking could find a place on the legislative docket.

This move was not marked by consistency of policy. Previously the President had been especially critical of categorical forms of school aid. After ESEA had been extended, he proposed a categorical bill of his own, targeted not to school clienteles but to communities where racial as well as educational problems were likely to be most severe. In such districts were

concentrated many voters who had no love for the compensatory education goals of ESEA.

ESAP-ESAA was also competitive with ESEA for public support, with regard to its provisions for local autonomy in the use of funds. Only one-third of the $1.5 billion requested by the President for ESAA was to be spent at the discretion of the Secretary of HEW. Two-thirds was to be spent by local districts applying for projects, and the grants were not burdened by as many planning and evaluation requirements as were the ESEA programs. Since Congress evidences a persistent desire to control the use of funds it authorizes, it is not surprising to find that as ESAA progressed through various stages of congressional deliberation, it encountered increasing demands for limitations on local autonomy. In the Act as finally enacted, many such limitations were incorporated from Senator Walter Mondale's alternative to ESAA, the Quality Integrated Education Act (S 683). As ESAA neared final passage and it was clear that congressional wishes on ESAA would prevail, the President still continued to press his views on local autonomy. He advocated combination of ESAA and ESEA into a comprehensive non-categorical approach to federal aid to education. This was his March 1972 proposal, entitled the Equal Educational Opportunity Act (HR 13915). In suggesting a consolidation whose prospects for enactment were practically non-existent, the President appeared to be tooling up for future assaults on ESEA, a goal which rose in importance as the initial thrust of ESAA was diluted.

Even the size of ESAA was designed to compete with ESEA. The President asked for a $1.5 billion dollar authorization for ESAA, about one-half billion to get started and one billion for the main program which was to be carried out during Fiscal Year 1972. This figure is comparable with the approximate $1 billion authorization ESEA was receiving during the same period.

ESAA as a Legislative Anomaly

The foregoing analysis suggests but does not fully depict the erratic and seemingly irrational nature of the policy-making process by which the ESAP-ESAA program proposal eventually became a law of the land. While no attempt is made herein to retell that rather extended and complex history, some of the more erratic events of that history and their significance are treated here. No student of American government expects the legislative process to operate with technological precision, but, in this instance, the tactical moves dictated by conventional wisdom to ensure a successful outcome seemed to be either missing or perverted. One participant-observer in the process described ESAA as follows:

> This is one of the wierdest pieces of legislation I've ever seen. It certainly is not typical. It has had every possible trick and parliamentary procedure tried on it. It had no friends to speak of but its enemies didn't take it seriously. Nobody wanted it, but it passed. It even passed at wierd times. I sat up more times with this bill than any other I know of. All the votes seemed to come in the early morning hours. It really is an unusual piece of legislation.[4]

ESAA as a product of disjointed incrementalism

In spite of the obvious anomalies of the ESAP-ESAA history, the student of educational policy-making need not conclude that it defies systematic analysis or theoretical relevance. If one turns to the concepts set forth by Charles E. Lindblom in The Policy-Making Process, and by others of similar perspective, the actions of the President and his agents and of the legislators may be interpreted as having political relevance, even rationality in terms of the process Lindblom termed "disjointed incrementalism."

What are some of the applicable concepts?

One can say that some ESAP-ESAA policy-makers "satisficed," i.e., they didn't try too hard. They chose "to decide instead on some acceptable level of goal accomplishment short of maximization and then pursue the search until a policy is found that attains that level."[5] For example, the President ran a stop-gap program for two years before permanent legislation was enacted, and USOE bureaucrats "satisficed" for quick but inefficient distribution of ESAP funds in the fall of 1970. On Capitol Hill, Congress was willing to stretch action on ESAP-ESAA over a long period of time, rather than condemn it to a speedy death. The administration has never requested more than one-quarter of the authorized spending levels which it had advocated at the outset.

Often ESAP-ESAA policy-makers decided to "deliberately choose a policy (knowing that it is not quite the right policy)

that leaves open the possibility of doing better in the next step, instead of a policy designed to be on target but difficult to amend."[6] This "next chance" approach allowed the President to propose ESAP while he waited for action on ESAA, and Congress to extend ESAP by continuing resolution, before finally enacting its own version of ESAA.

Throughout the Nixon administration, the changes made in desegregation policy appeared to be responsive to reputed readings of a fluttery and unstable public pulse. Everytime a policy position gained momentum, feedback from some source, whether liberal or conservative, appeared to divert its course. Together with "satisficing" and the "next chance" tactics mentioned above, sensitivity to shifts in public attitudes and support may be seen as devices to help decision-makers weave, duck, and even survive the in-fighting over potentially explosive issues.

In every turn of decision-making on ESAP-ESAA, grandiose pronouncements of intent were made, but only small changes from existing policy were produced. The President announced ESAP-ESAA in the spring of 1970 as an ambitious aid to the problems of desegregation, but southern school districts got most of the money, and they used it for questionable purposes. As a liberal alternative to ESAA, Democratic leaders such as Senator Walter Mondale proposed a "Quality Integrated Education Act" (S 683). The bill only prompted some changes in ESAA, and it did not speed final passage of the legislation. The Nixon anti-busing proposals in the summer of 1971 were largely discarded

by the Congress in the fall, and only a few of the anti-busing strictures were incorporated into ESAA. No matter how well advertised the proposals were, or in Lindblomian terms, no matter how energetic the "partisan analysis," changes in actual legislation were for the most part incremental.

This "gradualism" and the use of a partisan label to attract attention are also strategies which Lindblom would say in the long run are highly rational; in that they can produce workable compromise. Partisan analysis is similarly rational when it attracts support from opponents and lays a basis for eventual compromise. Admittedly the fluctuations were extreme. The President proposed emergency aid to desegregation and then attempted to outlaw busing. Black Congressman Augustus F. Hawkins took ESAA when it was designed primarily as aid to southern school districts and transformed it into a program with a much wider potential effect. Many legislators found justifications for supporting both the extension of ESEA and the passage of ESAA, in spite of their inconsistencies and potential competition for funding. In each of these cases, the policy-makers took a situation contrary to their liking and coaxed it into a different direction more suitable for their purposes. This tactic is called "reconstructive leadership" by Lindblom.

For analytic purposes, these concepts render the policy irrationalities in the enactment of ESAA somewhat more intelligible and comparable to other legislative histories. It must

be remembered that the law finally passed with bi-partisan support and it is funded for $358 million for Fiscal Year 1974. Thus it is alive, but in a precocious state of health. In its report of December, 1972 the Select Senate Subcommittee on Equal Educational Opportunity deplored ESAA debility and urged its resuscitation through combined executive branch and congressional effort.[6] A few months later, USOE witnesses before the House Appropriations Committee were finessing congressional criticism of programmatic short falls and funding delays by saying, "We are attempting to administer the bill Congress gave us." Thus the laborious birth of ESAA is to be followed by a troubled and rejected adolescence. For an explanation of this prognosis, one must look beyond the strategies of legislative enactment to the larger context of federal educational policy-making since 1968.

ESAA as a Casualty of the Federal School Aid Wars

With the benefit of hindsight we can see that federal aid to school desegregation under the Nixon administration was part of the attempt to reconstruct past policies of the Johnson administration in a manner compatible with Nixon administration views on federal aid to education in general. The transition that began with the early shifting of relative emphasis on Titles IV and VI of the Civil Rights Act of 1964 soon culminated in recourse to unprecedented presidential vetoes of several substantive and appropriations measures and impoundment of

funds for congressionally authorized educational programs. By 1971 confrontation politics had eroded the relationships between the executive branch and the Congress that had previously been, if not fully collaborative, at least productive of operable legislation. Accustomed to reacting to presidential and HEW-USOE policy initiatives, the Congress was not equipped to deal readily with an administration that was determined not to do business as usual.

The unfamiliar faces of many new appointees appeared among HEW and Office of Education witnesses before congressional committees, and they frequently advocated action on measures which admittedly they had not helped to develop. It appeared at times that the agency personnel were as much in the dark concerning the administration's next move as were the staffs and members of the congressional committees. Among the more high-handed White House exercises has been that of submitting the annual budget requests in a format which presumed that the requisite statutory authorizations for new programs, such as special revenue sharing, were assured of enactment by the Congress. And the White House used all the public relations resources at its command to shift attention away from program priorities and toward management efficiency and budgetary constraints. The congressional friends of generous federal school aid were not defenseless, but they were placed on the defensive.

Where does the ESAP-ESAA history fit into this context? In contrast to other legislative proposals, it was launched with both executive branch and congressional endorsement. School desegregation problems were becoming too persistent, pervasive, and intractable to be ignored and papered-over by the publicists. Congressmen were worried and interest groups were vocal. But the goals of all concerned were and still are, very disparate. Past experience indicates that, even under the most favorable circumstances, much time and skillful negotiations would be needed to develop viable modes of federal assistance and intervention in so complex an arena. Among the most important requisites for success is firm and energetic presidential leadership.

As was pointed out in the previous section, well-entrenched policy-making strategems worked to produce ESAA, which incorporates a veritable cornucopia of approaches for dealing with various types of school desegregation policies. Its categorical approach resembles the Great Society grant programs, but only a naive Congress can now presume that the law will be aggressively implemented by its reluctant protagonists. Unable to dissociate itself completely from the larger problems of school desegregation, or to enact its desired panaceas for outlawing busing, the administration has not yet proposed relegating ESAA to the oblivion sought for the Great Society programs. It is a tolerated, but unloved legislative step-child.

NOTES

[1]US, Congress, House, Department of Labor and Health, Education, and Welfare Appropriations for 1974, Hearings before a Subcommittee of the Committee on Appropriations, House of Representatives, 93d Cong., 1st sess., part 2, p. 517.

[2]John Egerton, "Title IV of the 1964 Civil Rights Act: A Program in Search of a Policy," reprinted as Appendix C in Emergency School Aid Act of 1970, Hearings before the General Subcommittee on Education of the Committee on Education and Labor, House of Representatives, 91st Cong., 2d sess., on HR 17846 and related bills, p. 962.

[3]The Emergency School Assistance Program: An Evaluation, (prepared by American Friends Service Committee, Delta Ministry of National Council of Churches, Lawyers' Committee for Civil Rights Under Law, Lawyers' Constitutional Defense Committee, NAACP Legal Defense Fund, Inc. and Washington Research Project: November 1970), p. 1.

[4]Jean Frohlicher, staff member, Office of Legislation, US Office of Education, interviewed by Joseph N. Morgan, May 9, 1973.

[5]Charles E. Lindblom, The Policy-Making Process, Foundations of Modern Political Science Series (Englewood Cliffs, New Jersey: Prentice-Hall, 1968), p. 24.

[6]US, Congress, Senate, Toward Equal Educational Opportunity, committee print of the Senate Select Committee on Equal Educational Opportunity, 93d Cong., 2d sess., p. 41.